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May 9, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 26, 2007

Case Number: TSO-0571

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. On December 6, 2006, the individual reported to the designated psychologist in the Human Reliability Program (HRP) at the facility that he needed help with an alcohol problem. The psychologist diagnosed the individual as alcohol dependent. Due to the security concern raised by this diagnosis, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on June 7, 2007. *See* DOE Exhibit 5. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on July 15, 2007. *See* DOE Exhibit 3. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual

requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Acting Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his wife, his father, his supervisor, his friend, the HRP psychologist to whom he first reported his problem, and the DOE consultant psychiatrist. The DOE Counsel and the individual submitted exhibits prior to the hearing.

II. The Notification Letter and the Security Concern at Issue

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. DOE Exhibit 1 (citing 10 C.F.R. § 710.8(j)). These statements were based on a July 15, 2007, report by the DOE consultant psychiatrist concluding that the individual suffered from "Alcohol Dependence, without physiological dependence, in early partial remission." *Id.* The DOE psychiatrist further recommended in his report that the individual complete a one-year treatment program and maintain abstinence during this period to demonstrate adequate evidence of rehabilitation or reformation. DOE Exhibit 3 at 10-11.

The Notification Letter also alleged the following: (1) for six months in 2005, he individual was consuming eight or 12 beers a week; (2) in early 2006, he was consuming one to two pints of vodka mixed with tonic water during a Saturday and Sunday as well as two drinks of vodka during the week, and would become intoxicated once a month; (3) by the end of 2006, he was consuming as much as three pints of vodka over the course of a Saturday and Sunday and he was no longer mixing it with tonic water, and would become intoxicated every Saturday and Sunday; (4) on at least two occasions, he called in sick to work because he was hung over, did not feel like he could go in to work, and was concerned he would test positive as his place of work conducts random breathalyzer tests; (5) in late August or September of 2006, after consuming four to eight drinks of vodka, he opened the flood gates to his yard so he could irrigate, blacked out, woke up at two or three in the morning, and could not remember whether or not he had closed the gates; (6) he admitted that his wife expressed concern regarding his alcohol use, that he hid his use from her, and that towards the end of 2006, he would purposely isolate himself so that he could drink without being hassled; (7) on December 3, 2006, he "had an intervention from his father" after becoming angry with him over a minor matter while intoxicated; (8) on December 5, 2006,¹ he sought treatment at his place of work because he was having problems stopping his consumption of alcohol on his own; (9) in January 2007, he enrolled in an outpatient treatment program and believes he was diagnosed with Alcohol Dependence. *Id.*

¹ According to the testimony of the psychologist to whom the individual reported his alcohol problem, this meeting took place on December 6, 2006. Hearing Transcript [hereinafter Tr.] at 25.

I find that the information set forth above constitutes derogatory information that raises questions regarding the individual's alcohol use under Criterion J. The security concern associated with Criterion J is that excessive alcohol consumption "often leads the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. For his part, the individual does not dispute any of the facts set forth in the Notification Letter, nor the security concern raised by those facts.

III. Analysis

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern in this case has been resolved.

A. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the

conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). Considering all of the above factors, I find that the nature, extent, and seriousness of the conduct, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the recency of the conduct, and the likelihood of recurrence are the most relevant factors in this case, with the last being the critical issue in this case.

B. The Diagnosis of Alcohol Dependence

It is undisputed that the individual suffers from Alcohol Dependence under the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition-Text Revision (DSM-IV TR). Both the DOE psychiatrist and the psychologist from the HRP at the individual's place of work, both of whose hearing testimony is discussed in more detail below, are in accord on this matter. Tr. at 60. From the uncontested facts set forth above, the individual's problem had quickly become severe by the time he sought help in December 2006. The remainder of decision, therefore, will focus primarily on the absence or presence of rehabilitation or reformation and other pertinent behavioral changes which, taking into account the recency of the conduct, inform my predictive assessment as to the likelihood of recurrence of the individual's problematic use of alcohol.

C. Whether the Security Concern Raised by the Diagnosis of Alcohol Dependence Has Been Resolved

1. Testimony Regarding the Steps Taken by the Individual toward Rehabilitation and Reformation from Alcohol Dependence

a. The Individual

The individual testified that he sought help for his alcohol problem because "I would not or could not stop" drinking. *Id.* at 96. One of the events that contributed to this awareness was an event described in the Notification Letter, when the individual had been drinking and passed out after opening the irrigation gates to his property. *Id.* at 96-99. That incident, which occurred in August or September 2006, "being that I didn't report immediately after that, I could probably not call it a trigger. [But it] never left my mind." *Id.* at 99. The individual described himself as being in denial "during all of 2006 and possibly time before." *Id.* at 102. But by the time he self-reported, "I'm drinking all day and I'm putting people off, and that's apparent to me" *Id.* According to the individual, the intervention of his father in December 2006 finally led him to seek help. By that time, the individual "was tired of my family being unhappy. I was tired of making time to go buy liquor. I was tired of building my life around liquor and drinking. I want better things for myself and for my family." *Id.* at 106.

Knowing that he might lose his job by doing so, *Id.* at 104, the individual contacted his employer's Occupational Medicine group, and met with the HRP psychologist on December 6, 2006. *Id.* at 25. Later that day, the individual attended his first Alcoholics Anonymous (AA) meeting. *Id.* at 104-05. The individual did not necessarily expect that he would be able to get help from his employer, but he was willing "to look for it myself, and AA was primarily what I was looking for." *Id.* at 105. At the recommendation of the HRP psychologist, the individual also enrolled in an intensive outpatient program. *Id.* at 106. The program met three hours in the evenings, four days a week for six weeks. *Id.* at 107. At first, he found the program "strange . . . but within the next two or three days, I liked it. I looked forward to it." *Id.*

Before the start of the six-week intensive outpatient program, the individual attended AA every day, and after the program, he attended one to two times per week. *Id.* at 109-10. When the HRP psychologist recommended that he attend more frequently, he began to attend two lunchtime meetings per week and one evening meeting. *Id.* at 110. His intention at the time of the hearing was to continue to attend AA. *Id.* at 118. While his father, a recovering alcoholic since the 1980s, acted in the role of a sponsor when the individual began his recovery, the individual has more recently formally taken on a sponsor through one of the AA groups he is currently attending. *Id.* at 64, 113, 118.

In addition to periodic follow-up meetings with the HRP psychologist, he has also met with a counselor from his facility's Employee Assistance Program (EAP). He describes these meetings as part of what he considers "a lot of positive support," in addition to that provided by AA, his wife, and "a lot of people that know that I have a drinking problem and that I've made a commitment not to drink, . . ." *Id.* at 119-21.

b. The Individual's Wife

The individual's wife testified that she had been married to the individual for twelve years. *Id.* at 81. She stated that she has not seen the individual drink alcohol since early December 2006, and is not aware of any circumstances under which he could have consumed alcohol without her knowledge. *Id.* at 83-84. According to the individual's wife, since her husband stopped drinking, their marriage is better. "It's better for me, it's better for my children, it's better, or I would say it's not." *Id.* at 84. She explained that she and the individual "communicate more" and that "he is striving to make amends with his oldest son's relationship and himself, and mine and his, and he just seems very forthcoming and honest about all of it. I believe him. I believe him. I believe that he is not drinking." *Id.* at 85.

Asked what she would do to "cause him to rethink" if he began to drink again, the individual's wife stated, "I think what he would need to do is he would need to leave. Why would I need to leave the situation? I'm not doing anything wrong." *Id.* at 86-87. She added, "How can I put things and fly things out there? 'I'm going to leave you.' Oh, you know, so much drama. 'You leave, . . . There is the door. Goodbye. Have a nice life.'" *Id.* at 87.

The individual's wife stated that she felt her husband "did a really commendable thing" by self-reporting his problem. "That was very hard for us to make that -- you know, for him to say, 'I'm an alcoholic.'" *Id.* at 92. She testified that she was comfortable in her belief that the individual would not drink in the future, stating that for the individual to return to drinking "would be pretty stupid as far as I'm concerned. I'm a good woman. . . . [W]hy would he want to lose two kids?" *Id.* at 88-89.

c. The Individual's Father

The individual's father testified that, two or three days prior to the individual reporting his problem to the HRP psychologist on December 6, 2006, he got a telephone call from the individual, and during the conversation it became "obvious" to his father that the individual had been "drinking a lot." *Id.* at 53. His father and mother decided to drive from their home to the place where the individual was working, a rental property owned by the individual and his father. *Id.* at 53, 55. His parents kept the individual on the telephone while they were making the approximately one-hour trip to see him and, when they arrived, they talked to the individual and he agreed to let them drive him to his house. *Id.* at 53-56.

The individual's father is a recovering alcoholic who has been sober since the 1980s. *Tr.* at 57. He stated that he had been concerned about his son's drinking for about six months prior to the December 2006 incident and that, though he had raised the issue with his son a couple of times previously, his son responded with "'I can take care of it,' you know, those kinds of things. So, yeah, I'd say he was in denial." *Id.* at 57, 58. This time however, when the individual's father asked him if he wanted help, he said that he did, and "that opened the door for his mother and I to become more aggressive." *Id.* at 60. During his long experience with AA, the individual's father had "heard the stories about there is a right time and a wrong time to convince somebody that they are at the point where they need help, and up until that day, I thought that anything his mother and I tried would not have been helpful." *Id.* at 60-61. However, "on that day, it just seemed like the right time." *Id.* at 61.

When his parents asked the individual what he thought he needed to do, he told them, "'I have to go and report to the lab,' and that was the right answer, and so we encouraged him to go and report to the lab, . . ." *Id.* at 62. They had "direct conversations" with the individual regarding the impact that this disclosure might have on his clearance, and "he knew, and we reinforced with him, that it didn't matter." *Id.* at 63. His father, who currently attends AA about once a month, agreed to act in the role of his son's sponsor, "and as he started getting better and getting more involved in the process, we started hammering on, you know, the various AA principles" *Id.* at 64, 65.

The individual's father has observed the changes in his son, "and I watched his family, and I knew -- I knew that, you know, his kids had really come around and the atmosphere in his home was great." *Id.* at 71. His father noticed that he looked better physically, and that "he became much more willing to talk about everything. It didn't seem to me like he was holding back

anything like he had been back in the days when he had been drinking.” *Id.* For the individual’s father “all of that added up to me where I felt like he hadn’t been drinking I didn’t see anything in the contact that I had with him or the experience that I had with the rest of his family to suggest to me that he’d been drinking.” *Id.* Finally, the father testified that he has “no reservation in making up my mind” that the individual has not had a drink since December 6, 2006, and that if his son were to have a craving to drink, he would call him. *Id.* at 73, 78.

d. Other Lay Witnesses

Also testifying at the hearing were a friend of the individual whom he has know for about three years, and his first line manager. *Id.* at 11. The individual stated that he called his friend to account for the approximately 16 hours per week that they spend together carpooling to and from work, “a substantial portion of my time both before and after reporting” his problem to his employer. *Id.* at 14, 15. The friend testified that he has never seen him drink nor has ever seen him intoxicated, and that he trusts him and feels “very confident about him.” *Id.* at 13, 14, 16. The individual’s first line manager has been in that position since July 2007, and stated that she had not discussed the individual’s drinking problem with him. *Id.* at 19. However, she testified that the individual is a “model employee” who is “extremely dependable” and “works extremely hard,” and that he has never reported to work intoxicated or at less than full capacity. *Id.*

2. Expert Testimony as to the Individual’s Progress in Recovery and the Risk of Relapse

The regulatory factors discussed above, both as to the severity of the individual’s problem and the steps that that the individual has taken thus far to overcome his problem, need to be taken into account in evaluating the “likelihood of recurrence,” in this case the likelihood that the individual will return to using alcohol in the future. While the lay witnesses at the hearing strongly and, in my opinion, sincerely believe that the individual will not return to drinking, I give more weight on this issue to the opinions of the two experts who testified at the hearing, the psychologist from the HRP at the individual’s place of work and the DOE psychiatrist.

a. The Testimony of the HRP Psychologist

The HRP psychologist’s primary role is to oversee the psychology aspect of fitness-for-duty evaluations conducted by the individual’s employer’s Occupational Medicine group. *Id.* at 24. It was in this role that he met the individual, when he reported to the Occupational Medicine group asking for help with an alcohol problem. *Id.* at 25.

Because the individual reported his own assessment at that meeting that his drinking was out of control and he needed assistance, the psychologist immediately initiated a fitness-for-duty evaluation. *Id.* The individual was put on two weeks paid leave, and the psychologist recommended that the individual enroll in a six-week intensive outpatient program, which the individual immediately did. *Id.* at 25-26, 34. The psychologist believed that, at that time, the

individual met the diagnostic criteria for alcohol dependence, due to difficulty he was having controlling his drinking, the fact that he drank rather than participate in family activities, and evidence of increasing tolerance for alcohol. *Id.* at 26.

However, the psychologist noted that the individual had a “pretty low” level of denial and a “pretty high level of insight” at the time he self-reported, adding that he did not try to minimize or make excuses for his behavior, or blame it on others. *Id.* at 28, 30. He was impressed with the individual’s attitude, noting that over the 11 years that he had been at the facility, “we’ve probably had fewer than half a dozen employees self-identify with an alcohol problem. Usually, we get involved after they’ve been identified by management or they’ve gotten a DWI or something.” *Id.* at 26-27. Thus, the fact that the individual self-reported, knowing the likely consequences, *Id.* at 32, “suggested he was more motivated than most of the people we see.” *Id.* at 27. That in itself, according to the psychologist, was “absolutely” a factor indicative of a good prognosis. *Id.* at 33.

After the individual returned from his two-week leave, he was restricted from handling classified information, required to abstain from alcohol and comply with the aftercare recommendations of the intensive outpatient program, and was subject to unannounced breath alcohol testing. *Id.* at 34. Since the individual completed the intensive outpatient program on January 23, 2007, the psychologist has met with him eight times, each appointment lasting from 30 to 60 minutes. *Id.* at 36-37. Though the ostensible purpose of the meetings was to monitor the individual’s progress and compliance with fitness-for-duty requirements, the meetings lasted longer than normal fitness-for-duty appointments, touching on issues such as his relationship with his wife and children, “issues more than how are you feeling, have you been drinking, okay, take care of yourself. It doesn’t go that way with [the Individual]. I think that’s a plus, because he’s receptive to that and he’s asked for help with those issues.” *Id.* at 37-38.

The psychologist found reasonable the DOE psychiatrist’s recommendation that the individual complete one-year of treatment and maintain abstinence during this period, adding that the level of treatment during that period must be such that one can “say with some level of confidence that the employee is not likely to have problems with alcohol again.” *Id.* at 40. Thus, for example, the psychologist noted that he initially believed that the individual needed to continue to attend AA sessions three times per week, but that the individual convinced him “that it just wasn’t productive, and I didn’t think it was necessary for him to go more frequently in order to ensure his sobriety. I think he’s more internally motivated to maintain sobriety than some would be at this stage of recovery.” *Id.* at 41, 44. In the opinion of the psychiatrist, “AA is good for a lot of people, but it’s not good for everybody,” and that he bases his assessment of the adequacy of an individual’s recovery “on their interactions with me, their ability to explore their behavior, what they say to me, how they talk about how their life is different now without alcohol.” *Id.* at 41-42.

In lieu of more frequent AA meetings, the psychologist recommended that the individual contact an EAP counselor at his workplace. *Id.* at 42. The individual made an appointment with a

counselor, whom he still sees. *Id.* The psychologist has discussed with the EAP counselor, whom he supervises, the individual's work in his sessions with the counselor, and the counselor sees the sessions as productive, dealing with issues related to both his continued sobriety and family relationships to the counselor's satisfaction. *Id.* at 43.

The psychologist responded in the affirmative when asked whether there was, at the time of the hearing, adequate evidence of rehabilitation and reformation. *Id.* at 45. The individual "has just steadfastly been able to assert his awareness that alcohol was a problem and he's not willing to go down that road anymore." *Id.* What gave the psychiatrist the most confidence was that the individual is "more assertively addressing the family issues that I think were contributing significantly to his escaping to alcohol." *Id.* at 45-46. Thus, the psychologist found the individual's prognosis to be good and his risk of relapse low. *Id.* at 48, 51.

b. The Testimony of the DOE Psychiatrist

The DOE psychiatrist was present during the entire hearing and so heard all of the hearing testimony. Testifying last, he described the preceding testimony as "positive, impressive," noting that the testimony of the individual's father and wife contained "all the things that you would hope to hear if there would be a positive prognosis." *Tr.* at 124-25. The psychiatrist added that "there has been, in my experience, exceptionally clear and positive evidence in the hearing today leading me to think that there is adequate evidence of rehabilitation or reformation from his alcohol disorder at this point in time." *Id.* at 125.

Referencing the recommendation in his report of one year of treatment and sobriety, DOE Exhibit 3, the psychiatrist cited "some of the later good, expensive studies," that about 90 percent of alcoholics who try to stop drinking fail to make it through their first year. *Tr.* at 126-27. Thus, "if you can make it that year, it shows you're in the top 90th percentile, and compared to the rest of the pack, the prognosis for you is pretty good."²

The psychiatrist characterized the behavior of the individual as "strong and trusting, trusting DOE even to turn himself in, in a sense, trusting the love of his wife, trusting the advice of his father. So he's done all the right things." *Id.* at 125. "He had the courage to take the steps that he needed to do, followed through on all the things that you need to follow through on, and like I said, my answer today to me clinically is pretty easy, The prognosis is excellent." *Id.* at 126. Finally, the psychiatrist concurred with the testimony of the lab psychologist that the risk of relapse in this case is "low." *Id.* at 127.

² *Id.* at 127. In his report, the DOE psychiatrist stated, "Typically I require one-year sobriety for demonstration of rehabilitation or reformation from Alcohol Abuse, and two years sobriety for evidence of rehabilitation from Alcohol Dependence." DOE Exhibit 3 at 11. The psychiatrist noted, however, that the individual "has a number of good prognostic factors. Most importantly, he appropriately sought treatment on his own and self-reported to DOE. Secondly, he began treatment for his disorder before he had developed any significant legal, occupational, social, or medical symptoms." *Id.*

D. Hearing Officer Evaluation of Evidence

As noted above, the decision of a Hearing Officer in a Part 710 case is a predictive assessment, in this case an assessment of the likelihood that the individual will relapse from abstinence from alcohol, the potential consequences to national security of such a relapse not being in dispute. The evidence in this case points nearly universally toward a good prognosis, *i.e.*, that it is quite unlikely that the individual will return to drinking.

Both of the experts who testified at the hearing were in accord on this prognosis. And these opinions were based at least in part on the same facts that I find compelling in this case. First, it is greatly to the individual's credit that he took the step of proactively reporting his problem to his employer. Second, the individual appears to have tremendous insight into why he used alcohol and clearly recognizes the benefits he has reaped by stopping, the outcome of the present proceeding notwithstanding. Third, he has a remarkable support system in place, including a very frank, loving spouse and caring parents, one of whom knows full well, from his own experience, what his son has gone through. Considering all of the evidence in this case, I am thoroughly convinced that the individual is very likely facing a bright, sober future.

V. Conclusion

For the reasons set forth above, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for access authorization. However, I find that the concern raised by that evidence has been more than sufficiently mitigated in this case. I therefore conclude, "after consideration of all the relevant information, favorable and unfavorable," that restoring the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: May 9, 2008